

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

VINCENT U. WILLIAMS

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD79001

DATE: August 2, 2016

Appeal From:

Saline County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Ellen H. Flottman, Columbia, MO, for appellant.

Dora Fichter, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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VINCENT U. WILLIAMS,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD79001

Saline County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Vincent U. Williams appeals following the motion court's denial of his pro se Rule 24.035 motion and alleges that he was abandoned when post-conviction counsel was permitted to withdraw from his representation, leaving him without the benefit of counsel.

REVERSE, VACATE and REMAND

Division Two holds:

1. A post-conviction movant has no constitutional right to counsel. The right to counsel in post-conviction proceedings exists, if at all, as a state-created right. Missouri Supreme Court Rules 24.035(e) and 29.15(e) provide that "[w]hen an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant." Thus, indigent post-conviction movants have a right to be represented by counsel in connection with Rule 24.035 or Rule 29.15 pro se motions.

2. An initial determination of indigency must be made by the motion court based on the content of the movant's pro se motion and/or on whether the movant was permitted to proceed in forma pauperis at the time of a guilty plea or trial. Here, the motion court appropriately appointed counsel when Williams filed his Motion.

3. Once appointed, Williams's counsel had the duty pursuant to Rule 24.035 to either file an amended motion or a statement setting out facts that demonstrate the actions that were taken to ensure that an amended motion was not needed.

4. When Williams' appointed counsel filed a motion to withdraw, he had not filed an amended Rule 24.035 motion or a statement explaining that an amended motion was not needed.

5. The motion court was required to determine whether the natural result of granting the motion to withdraw--appointed counsel's failure to comply with the obligations of Rule 24.035(e)--would constitute abandonment.

6. The motion court's failure to conduct this required inquiry was only exacerbated by the fact that Williams was afforded no notice of, nor opportunity to be heard on, appointed counsel's motion to withdraw, or in connection with subsequent proceedings leading to the denial of his pro se Rule 24.035 motion.

Opinion by Cynthia L. Martin, Judge

August 2, 2016

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